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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,886	10/21/2003	Jerry Zucker	PGI6044P1131US	3882

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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CHICAGO, IL 60661

EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,886

Applicant(s)

ZUCKER, JERRY

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/29/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The independent claim supra recites the property limitation of “the frangible fibrous layer exhibits an elastic modulus at least 20% less than that of the second fibrous component and/or unit area component of the substrate layer”, but fail to set forth what provides for said property. Ex parte Slob, 157 USPQ states the following with regard to an article claimed by defining property values:

Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions, which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired characteristics, thus, expression “a liquefiable substance having a liquification temperature from 40°C to about 300°C and being compatible with the ingredients in the powdered detergent composition” is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and in effect, recites compositions by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

2. Claims 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 recites the limitation of the first fibrous component having a denier of equal to or less than 500 nanometers. The Examiner has interpreted this limitation to be read as the DIAMETER of the first fibrous component is to be equal to or less than 500 nanometers.

3. Claims 2-9 are also rejected because it is unclear to Examiner how after the first fibrous component fragments into multiple sub-fibers they can still have the same denier as the first

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fibrous component. The Examiner has interpreted this limitation to mean that each of the split fibers have the same diameter as the other sub-fibers split from the original unsplit fiber.

Double Patenting

4. Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-9 of copending Application No. 10/819,034. Although the conflicting claims are not identical, they are not patentably distinct from each other because both articles are drawn to hydroentangled nano-denier/diameter filaments for use in absorbent articles.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Pike (US 5,935,883).

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- a. Pike teaches a web containing superfine microfibers comprising a blend of a first group of split microfibers which contains a blend of a two polymer components of which at least one is hydrophilic, useful in absorbent articles (Abstract). The invention additionally provides a meltblown fiber web (Abstract). The meltblown fiber web may be made of staple length fibers (col. 2, lines 38-44). The two layers may be combined via hydroentangling and is taught as a means of split fiber production (col. 8, lines 6-16 and col. 1, lines 53-61). Figures 1 and 2 illustrate the splittable fibers, which upon splitting yield fibers of equivalent denier/diameter. By adjusting the thickness of the conjugate microfibers, the split microfibers of the invention can be produced having a thickness of about 0.2 μm or less (col. 4, lines 57-61). The article of Pike may be used for protective garments (medical barrier article, gowns), diapers, adult care products and sanitary napkins (col. 8, lines 28-32).
7. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Vonfeldt et al. (US 6,739,023).
- a. Vonfeldt et al. teach a method of forming a nonwoven composite fabric comprising hydroentangling a first layer of spittable fibers and a second layer of staple fibers (Abstract). Figures 2 and 3 illustrate the splittable fibers, which upon splitting yield fibers of equivalent denier/diameter. Hydroentangling is also taught as a means of split fiber production (col. 2, lines 8-10). The splittable fibers applied invention have a denier of less than about 0.7 and most desirably a denier of less than about 0.01 (col. 2, lines 37-41). When using a density of 1.14 grams/cm³ (polyester fiber) the diameter of the splittable fibers is most desirably less than 1 μm (conversions done by Examiner).

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The specific utilization of the article made by the Vonfeldt et al. process has not been disclosed in the applied patent, but as article meets the limitations set forth in claims 1 and 2 and as it may be made with activated charcoal and superabsorbent materials the article may serve in the roles instantly recited in claims 3-9 (col. 10, lines 10-42).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

mom

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER